

CS FOR HOUSE BILL NO. 149(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/11/05

Referred: Rules

Sponsor(s): REPRESENTATIVES RAMRAS, Wilson, Lynn, McGuire, Gatto, Kelly, Foster, Holm, Stoltze

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to controlled substances; relating to the crimes of manslaughter,**
2 **endangering the welfare of a child, and misconduct involving a controlled substance;**
3 **relating to the manufacture of methamphetamine and to the sale, possession, and**
4 **delivery of certain substances and precursors used in the manufacture of**
5 **methamphetamine; relating to listing certain anabolic steroids as controlled substances;**
6 **and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** AS 11.41.120(a) is amended to read:

9 (a) A person commits the crime of manslaughter if the person

10 (1) intentionally, knowingly, or recklessly causes the death of another
11 person under circumstances not amounting to murder in the first or second degree;

12 [OR]

13 (2) intentionally aids another person to commit suicide;or

(3) knowingly manufactures or delivers a controlled substance in violation of AS 11.71, and a person dies as a direct result of ingestion of the controlled substance; the death is a result that does not require a culpable mental state.

* Sec. 2. AS 11.51.100(c) is amended to read:

(c) In this section,

(1) "building," in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a part of the same building;

(2) "physically mistreated" means

(A) [(1)] having committed an act punishable under AS 11.41.100 - 11.41.250; or

(B) [(2)] having applied force to a child that, under the circumstances in which it was applied, or considering the age or physical condition of the child, constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation because of the substantial and unjustifiable risk of

(i) [(A)] death;

(ii) [(B)] serious or protracted disfigurement;

(iii) [(C)] protracted impairment of health;

(iv) [(D)] loss or impairment of the function of a body member or organ;

(v) [(E)] substantial skin bruising, burning, or other skin injury;

(vi) [(F)] internal bleeding or subdural hematoma;

(vii) [(G)] bone fracture; or

(viii) [(H)] prolonged or extreme pain, swelling, or injury to soft tissue.

* Sec. 3. AS 11.51.100 is amended by adding new subsections to read:

(g) Notwithstanding AS 11.51.130, a person commits the crime of endangering the welfare of a child in the first degree if the person knowingly manufactures or attempts to manufacture methamphetamine in violation of AS 11.71 in a building, with reckless disregard that the building is used as a permanent or temporary home or place of lodging for one or more children under 18 years of age.

(h) Endangering the welfare of a child in the first degree under (g) of this section is a class C felony.

* **Sec. 4.** AS 11.51.130(a) is amended to read:

(a) A person commits the crime of contributing to the delinquency of a minor if, being 19 years of age or older or being under 19 years of age and having the disabilities of minority removed for general purposes under AS 09.55.590, the person aids, induces, causes, or encourages a child

(1) under 18 years of age to do any act prohibited by state law unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(2) under 18 years of age or allows a child under 18 years of age, **under circumstances not proscribed under AS 11.51.100(g)**, to enter or remain in the immediate physical presence of the unlawful manufacture, use, display, or delivery of a controlled substance knowing that the manufacture, use, display, or delivery is occurring, unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(3) under 16 years of age to be repeatedly absent from school, without just cause; or

(4) under 18 years of age to be absent from the custody of a parent, guardian, or custodian without the permission of the parent, guardian, or custodian or without the knowledge of the parent, guardian, or custodian, unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative defense to a prosecution under this paragraph that, at the time of the alleged offense, the defendant

(A) reasonably believed that the child was in danger of physical

1 injury or in need of temporary shelter; and

2 (B) within 12 hours after taking the actions comprising the
3 alleged offense, notified a peace officer, a law enforcement agency, or the
4 Department of Health and Social Services of the name of the child and the
5 child's location.

6 * **Sec. 5.** AS 11.71.020(a) is amended to read:

7 (a) Except as authorized in AS 17.30, a person commits the crime of
8 misconduct involving a controlled substance in the second degree if the person

9 (1) manufactures or delivers any amount of a schedule IA controlled
10 substance or possesses any amount of a schedule IA controlled substance with intent
11 to manufacture or deliver;

12 (2) manufactures any material, compound, mixture, or preparation that
13 contains

14 (A) methamphetamine, or its salts, isomers, or salts of isomers;

15 or

16 (B) an immediate precursor of methamphetamine, or its salts,
17 isomers, or salts of isomers;

18 (3) possesses an immediate precursor of methamphetamine, or the
19 salts, isomers, or salts of isomers of the immediate precursor of methamphetamine,
20 with the intent to manufacture any material, compound, mixture, or preparation that
21 contains methamphetamine, or its salts, isomers, or salts of isomers; [OR]

22 (4) possesses a listed chemical with intent to manufacture any material,
23 compound, mixture, or preparation that contains

24 (A) methamphetamine, or its salts, isomers, or salts of isomers;

25 or

26 (B) an immediate precursor of methamphetamine, or its salts,
27 isomers, or salts of isomer;

28 **(5) possesses methamphetamine in an organic solution with intent**
29 **to extract from it methamphetamine or its salts, isomers, or salts of isomers; or**

30 **(6) under circumstances not proscribed under AS 11.71.010(a)(2),**
31 **delivers**

1 (A) an immediate precursor of methamphetamine, or the
 2 salts, isomers, or salts of isomers of the immediate precursor of
 3 methamphetamine, to another person with reckless disregard that the
 4 precursor will be used to manufacture any material, compound, mixture,
 5 or preparation that contains methamphetamine, or its salts, isomers, or
 6 salts of isomers; or

7 (B) a listed chemical to another person with reckless
 8 disregard that the listed chemical will be used to manufacture any
 9 material, compound, mixture, or preparation that contains

10 (i) methamphetamine, or its salts, isomers, or salts of
 11 isomers;

12 (ii) an immediate precursor of methamphetamine, or
 13 its salts, isomers, or salts of isomers; or

14 (iii) methamphetamine or its salts, isomers, or salts
 15 of isomers in an organic solution.

16 * **Sec. 6.** AS 11.71.020 is amended by adding a new subsection to read:

17 (d) In a prosecution under (a) of this section, possession of nine grams or more
 18 of the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, the salts,
 19 isomers, or salts of isomers of those chemicals is prima facie evidence that the person
 20 intended to use the listed chemicals to manufacture, to aid or abet another person to
 21 manufacture, or to deliver to another person who intends to manufacture
 22 methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers
 23 of methamphetamine or its immediate precursors. The prima facie evidence described
 24 in this subsection does not apply to a person who possesses the listed chemicals
 25 ephedrine, pseudoephedrine, phenylpropanolamine, or the salts, isomers, or salts of
 26 isomers of those chemicals

27 (1) and the listed chemical was dispensed to the person under a valid
 28 prescription; or

29 (2) in the ordinary course of a legitimate business, or an employee of a
 30 legitimate business, as a

31 (A) retailer or as a wholesaler;

(B) wholesale drug distributor licensed by the Board of Pharmacy;

(C) manufacturer of drug products licensed by the Board of Pharmacy;

(D) pharmacist licensed by the Board of Pharmacy; or

(E) health care professional licensed by the state.

* **Sec. 7.** AS 11.71.030(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the third degree if the person

(1) under circumstances not proscribed under AS 11.71.020(a)(2) - (6) [AS 11.71.020(a)(2) - (4)], manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver;

(2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or

(3) possesses any amount of a schedule IA or IIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center;

or

(B) on a school bus.

* **Sec. 8.** AS 11.71.180 is amended by adding a new subsection to read:

(f) Schedule VA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including their salts, esters, isomers, and salts of esters and isomers if those salts, esters, or isomers promote muscle growth, whenever the existence of these salts, esters, and isomers is possible within the specific chemical designation: anabolic steroids. In this subsection, "anabolic steroids" means any drug or hormonal substance that is chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) and that promotes muscle

growth; "anabolic steroids" does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the United States Secretary of Health and Human Services for that administration, unless a person prescribes, dispenses, or distributes that type of anabolic steroid for human use; "anabolic steroids" includes the following:

- (1) boldenone;
- (2) chlorotestosterone (4-chlorotestosterone);
- (3) clostebol;
- (4) dehydrochlormethyltestosterone;
- (5) dihydrotestosterone (4-dihydrotestosterone);
- (6) drostanolone;
- (7) ethylestrenol;
- (8) fluoxymesterone;
- (9) formebolone (formebolone);
- (10) mesterolone;
- (11) methandienone;
- (12) methandranone;
- (13) methandriol;
- (14) methandrostenolone;
- (15) methenolone;
- (16) methyltestosterone;
- (17) mibolerone;
- (18) nandrolone;
- (19) norethandrolone;
- (20) oxandrolone;
- (21) oxymesterone;
- (22) oxymetholone;
- (23) stanolone;
- (24) stanozolol;
- (25) testolactone;
- (26) testosterone;

1 (27) trenbolone.

2 * **Sec. 9.** AS 11.71 is amended by adding a new section to article 2 to read:

3 **Sec. 11.71.210. Purchase or receipt of restricted amounts of certain listed**
 4 **chemicals.** (a) A person commits the crime of purchase or receipt of restricted
 5 amounts of certain listed chemicals if the person purchases or receives more than nine
 6 grams of the following listed chemical, its salts, isomers, or salts of isomers within
 7 any 30-day period:

8 (1) ephedrine under AS 11.71.200(4);

9 (2) pseudoephedrine under AS 11.71.200(13);

10 (3) phenylpropanolamine under AS 11.71.200(11).

11 (b) This section does not apply to a person who lawfully purchases or receives
 12 more than nine grams of a listed chemical identified in (a) of this section

13 (1) that was dispensed to the person under a valid prescription; or

14 (2) in the ordinary course of a legitimate business, or to an employee
 15 of a legitimate business, as a

16 (A) retailer or as a wholesaler;

17 (B) wholesale drug distributor licensed by the Board of
 18 Pharmacy;

19 (C) manufacturer of drug products licensed by the Board of
 20 Pharmacy;

21 (D) pharmacist licensed by the Board of Pharmacy; or

22 (E) a health care professional licensed by the state.

23 (c) Purchase or receipt of restricted amounts of certain listed chemicals is a
 24 class C felony.

25 * **Sec. 10.** AS 11.71.900(20) is amended to read:

26 (20) "recreation or youth center" means a building, structure, athletic
 27 playing field, or playground

28 (A) run or created by a municipality or the state to provide
 29 athletic, recreational, or leisure activities for minors; or

30 (B) operated by a public or private agency to provide
 31 shelter, training, or guidance for minors.

1 * **Sec. 11.** AS 17.30 is amended by adding a new section to article 1 to read:

2 **Sec. 17.30.090. Dispensation of and registration and record requirements**
 3 **for certain listed chemicals.** (a) A wholesaler, manufacturer, or distributor of
 4 products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
 5 salts, isomers, or salts of isomers, or iodine or crystal iodine, shall keep complete
 6 records of all transactions involving those products, including the names of all parties
 7 involved in the transaction, the date of the transaction, and the amount of the drug
 8 products involved. The records shall be kept readily retrievable and separate from all
 9 other invoices or records of transactions not involving those products and shall be
 10 maintained for not less than three years and must allow for in-person inspection of the
 11 records by law enforcement officers.

12 (b) A retailer of a product or substance that contains (1) as the sole active
 13 ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers,
 14 or salts of isomers, or (2) iodine, or crystal iodine may not sell or dispense the product
 15 or substance unless the retailer confirms the identity of the purchaser by valid
 16 government-issued photo identification and the retailer requires the purchaser to sign a
 17 written log completed by the retailer showing the date of the transaction, name of the
 18 purchaser, type of identification and the identification number, and the amount
 19 dispensed. The Department of Public Safety and other law enforcement officers shall
 20 have access to the log. The log and the information entered into the log is
 21 confidential. The retailer may not allow access to the log or release information
 22 contained within the log except to the Department of Public Safety or other law
 23 enforcement officers.

24 (c) A person may not offer to sell a product or substance that contains (1) as
 25 the sole active ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, or
 26 their salts, isomers, or salts of isomers, or (2) iodine, or crystal iodine unless that
 27 product or substance is displayed behind a service counter and not accessible to the
 28 public or is kept in a secured cabinet or storage area that may only be accessed by the
 29 seller.

30 (d) Nothing in this section limits the authority of a person regulated by this
 31 section to report to a law enforcement agency or officer suspicious purchases of a

1 chemical, product, or substance.

2 (e) Notwithstanding (a) of this section, if a municipality enacts an ordinance
3 requiring wholesalers, manufacturers, and distributors to report the information
4 maintained under (a) of this section, each wholesaler, manufacturer, and distributor
5 shall regularly report that information to the municipal police department at intervals
6 required in the ordinance.

7 (f) In this section,

8 (1) "distributor" means a person in the state or another state, other than
9 a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes
10 a drug product described in (a) of this section to a person who is not the ultimate user
11 or consumer of the product;

12 (2) "manufacturer" means a person in the state who produces,
13 compounds, packages, or in any manner initially prepares for sale or use a drug
14 product described in (a) of this section, or a person in another state if the person causes
15 the products to be compounded in, packaged in, or transported to this state;

16 (3) "readily retrievable" means available for inspection without prior
17 notice at the registration address if that address is in the state; if the registration
18 address is outside the state, "readily retrievable" means records must be furnished
19 within three working days by courier, facsimile, mail, or electronic mail;

20 (4) "wholesaler" means a person in the state or another state, other than
21 a manufacturer, who sells, transfers, or in any manner furnishes a drug product
22 described in (a) of this section to another person in the state for the purpose of the drug
23 product's being resold.

24 (f) A violation of (a), (b), or (c) of this section is a class A misdemeanor,
25 punishable upon conviction only by a fine in an amount not to exceed \$10,000. A
26 wholesaler, manufacturer, or distributor that knowingly fails to report as required by
27 (d) of this section is guilty of a violation. In this subsection, "knowingly" has the
28 meaning given in AS 11.81.900(a).

29 * **Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to
30 read:

31 **APPLICABILITY.** This Act applies to offenses committed on or after the effective

- 1 date of this Act.
- 2 * **Sec. 13.** This Act takes effect July 1, 2005.